Remarks:

Claims 13, 16-18, 20-26, 28-36, 38-45, 47-50, 61 and 62 are pending in the current application. Claim 44 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite and failing to point out and distinctly claim the subject matter of the invention. Pending claims are rejected under 35 U.S.C. 102(e). Claims 17, 18, 25, 26, 35, 36, 44 and 45 are rejected under 35 U.S.C. 103(a).

Claim 44 has been amended. No new matter is added. Support for the amended language is provided in the specification and the drawings.

§112 Rejection(s):

Claim 44 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Claim 44 has been amended to more distinctly recited the subject matter of the invention in accordance with one embodiment. It is respectfully requested that the 112 rejection to be withdrawn.

§102 Rejection(s):

Claims 13, 16-18, 20-26, 28-36, 38-45, 47-50, 61 and 62 are rejected under 35 U.S.C. 102(e) as being anticipated by Heo (US 6,563,840). Claims 13, 16-18, 20-26, 28-36, 38-45, 47-50, 61 and 62 are also rejected under 35 U.S.C. 102(e) as being anticipated by Lee (US 2002/005442).

Examiner has noted and the Applicant confirms that the cited references Heo and Lee, as well as the present application, have a common assignee, namely LG of South Korea. MPEP 715.01(b) provides that when "a rejection is applied . . . in an application filed on or after November 29, 1999, under 35 U.S.C. 102(e)/103 using the reference, a showing that the invention was commonly owned, or subject to an obligation of assignment to the same person,

at the time the later invention was made would preclude such a rejection or be sufficient to overcome such a rejection. See MPEP § 706.02(l) and § 706.02(l)(1)."

Since both cited references Heo and Lee are assigned to the same entity as the present application, it is respectfully submitted that the 102(e) grounds of rejection should be withdrawn.

§103 Rejection(s):

Claims 17, 18, 25, 26, 35, 36, 44 and 45 are rejected under 35 U.S.C. §103(a) as being unpatentable over Lee in view of Chander (US 5,909,651). The 103 grounds of rejection are also traversed because as discussed above, Lee is an improper reference and Chander alone does not teach or suggest all the elements of the invention as recited in the pending claims.

Further, no justifiable reason is articulated for the combination of Chander and Lee. While the suggestion to modify or combine references may come from the knowledge and common sense of a person of ordinary skill in the art, the fact that such knowledge may have been within the province of the ordinary artisan does not in and of itself make it so, absent clear and convincing evidence of such knowledge. C.R. Bard, Inc. v. M3 Systems, Inc., 157 F.3d 1340, 1352, 48 U.S.P.Q.2d 1225, 1232 (Fed. Cir. 1998) (emphasis added).

Here, the modification or combination proposed by the Examiner is not based on any clear and convincing evidence of a reason, suggestion, or motivation in the prior art that would have led one of ordinary skill in the art to combine the references. Rather, the reason, suggestion and motivation for the combination of references proposed by the Examiner simply is impermissible hindsight reconstruction given the benefit of Appellant's disclosure.

The Federal Circuit has consistently held that hindsight reconstruction does not constitute a prima facie case of obviousness under 35 U.S.C. § 103. In re Geiger, 2 USPQ2d 1276 (Fed Cir. 1987). Unfortunately, the Examiner rather than pointing to what the prior art discloses and teaches as to making the suggested modification relies on assumptions and

statements without any support in the record. As such, the Examiner's statements regarding obviousness and motivation to modify are but shortcuts to a conclusion of obviousness devoid of the required analytical approach based on what is actually disclosed in the prior art.

Reliance on impermissible hindsight to avoid express limitations in the claims and setting forth unsupported hypothetical teachings to recreate the Applicant's claimed invention cannot establish a prima facie case of obviousness. Since obviousness may not be established by hindsight reconstruction, Applicants invite the Examiner to point out the alleged motivation to combine with specificity,[1] or alternatively provide a reference or affidavit in support thereof, pursuant to MPEP §2144.03.[2]

Since no reasonable justification is provided in the Office Action as to how such modification or combination is possible and obviousness may not be established based on hindsight and conjecture, it is respectfully requested that the 103 grounds of rejection be withdrawn.

For the above reasons, it is respectfully submitted that the pending claims are in condition for allowance.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein; and no amendment made was for the purpose of narrowing the scope of any claim, unless Applicants have expressly argued herein that such amendment was made to distinguish over a particular reference or combination of references.

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1 *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984).

2 "The rationale supporting an obviousness rejection may be based on common knowledge in the art or "well-known" prior art . . . If the applicant traverses such an assertion the examiner should cite a reference in support of his or her position. When a rejection is based on facts within the personal knowledge of the examiner . . . the facts must be supported, when called for by the applicant, by an affidavit from the examiner."

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California, telephone number (213) 623 2221 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

Date: August 10, 2007

By: 

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